

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARK PATRICK PHILLIPS,

Defendant-Appellant.

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UNPUBLISHED

March 16, 2006

No. 258070

Wayne Circuit Court

LC No. 04-004799-01

Before: Davis, P.J., and Cavanagh and Talbot, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions for assault with intent to do great bodily harm less than murder, MCL 750.84, and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant was sentenced to two years' probation for the assault with intent to do great bodily harm less than murder conviction, and he was sentenced to two years' imprisonment for the felony-firearm conviction. We affirm.

This case arose out of a shooting incident after the end of a high school party at a clubhouse near an empty field in Detroit. Travis Goodwin, a high school student, attended the party with several of his friends. Defendant worked at the club as a security guard. As all involved individuals were leaving the party, an unknown person, or possibly several unknown persons, fired several gunshots. The testimony indicates that some panic and confusion ensued. Goodwin took shelter behind a car. Defendant retrieved his handgun from his car and fired at Goodwin, who sustained a gunshot to the leg and fell down.

Defendant first argues on appeal that the verdict was against the great weight of the evidence, or in the alternative, the evidence was insufficient to find him guilty beyond a reasonable doubt. We disagree.

Assault with intent to do great bodily harm less than murder requires an attempt or threat to harm another through force or violence, and it requires “an intent to do serious injury of an aggravated nature.” *People v Brown*, 267 Mich App 141, 147; 703 NW2d 230 (2005), quoting *People v Mitchell*, 149 Mich App 36, 39; 385 NW2d 717 (1986). “The test to determine whether a verdict is against the great weight of the evidence is whether the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand.” *People v Musser*, 259 Mich App 215, 218-219; 673 NW2d 800 (2003). “When determining if sufficient evidence was presented to sustain a conviction, a court must view the evidence in a

light most favorable to the prosecution” to “determine whether any rational trier of fact could have found that the essential elements of the crime were proven as required.” *People v Tombs*, 472 Mich 446, 459; 697 NW2d 494 (2005).

There was no direct testimony that the bullet that struck Goodwin actually came from defendant’s gun. However, there was testimony from several witnesses, including Goodwin and defendant, that defendant shot at Goodwin and that Goodwin sustained a shot to the leg and fell to the ground immediately thereafter. Defendant maintains that he observed Goodwin holding a gun and participating in the other shooting taking place at the time. However, only defendant claims to have seen Goodwin holding a gun, and when defendant and another security guard searched Goodwin, they did not find one. No abandoned guns were found at the scene, and only two spent casings were recovered, one of which matched the gun defendant turned over to the police. Defendant admitted that he purposefully retrieved his gun from his car and that he knelt down on one knee when he aimed at Goodwin to avoid a fatality. This evidence does not preponderate so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand. Further, a rational trier of fact could be persuaded that the essential elements of the offense were proven beyond a reasonable doubt.

Defendant next argues that the trial court misapplied the law of self-defense as it applies to the facts, so the verdict should be overturned. We disagree. We review the trial court’s factual findings for clear error, and we review de novo questions of law. *People v Knight*, 473 Mich 324, 338; 701 NW2d 715 (2005).

Generally, a person acts in self-defense if that person is free from fault and, under all the circumstances, he honestly and reasonably believed that he was in imminent danger of death or great bodily harm and that it was necessary for him to exercise deadly force. *People v Riddle*, 467 Mich 116, 119; 649 NW2d 30 (2002). Ordinarily, the actor must try to avoid using deadly force, such as by retreating or using a lesser amount of force, but only if it is safe and reasonable to do so. *Id.*, 119-120. The trial court presented the question as whether it was “reasonable to believe that, from the defendant’s perspective, that he was getting shot at, or that his life was threatened?” The court correctly stated that there is a duty to retreat if defendant could have done so safely. The court then observed that no evidence corroborated defendant’s testimony that Goodwin was shooting at him, that Goodwin even had a gun on that night, or that he was the subject of a “sudden, fierce, and violent attack,” even if there was shooting in the area. Thus, the court appropriately found that defendant could have retreated but elected not to, and he did not have an honest and reasonable belief that deadly force was necessary.

Defendant finally argues that the trial court excluded evidence that may have supported an important element of his case. We disagree. A trial court’s evidentiary decisions are reviewed for an abuse of discretion. *People v Manser*, 250 Mich App 21, 31; 645 NW2d 65 (2002). “An abuse of discretion occurs only if an unprejudiced person, considering the facts on which the trial court relied, would find that there was no justification or excuse for the ruling made.” *People v Aldrich*, 246 Mich App 101, 113; 631 NW2d 67 (2001). Even if the trial court erred, we will not disturb the trial court’s judgment “unless refusal to take this action appears to the court inconsistent with substantial justice.” MCR 2.613(a).

Defendant asserts that he attempted to show that gang members had infiltrated the party, and he had attempted to defend himself and others because the shooting outside the club was

gang-related. Defendant contends that Goodwin was one of the gang members he had escorted out of the club for acting unreasonably, and he maintains that Goodwin was participating in the shooting. Defendant argues that the trial court failed to consider this theory or the facts he presented in support of it. However, the trial court permitted defendant to connect the shooting of Goodwin to gang activity on numerous occasions, and the trial court permitted the defense to ask questions with which to make that connection. However, the only evidence defendant elicited on that issue came from the other security guard, who maintained that he saw a partygoer wearing a t-shirt bearing a gang imprint. Goodwin and the other witnesses all maintained that they were not members of the gang, and no evidence was presented showing otherwise. The trial court's decision not to address the issue in its ultimate findings of fact did not stem from exclusion of evidence but because defendant did not connect the shooting of Goodwin to gang related activity, despite the opportunity defendant had to do so.

Affirmed.

/s/ Alton T. Davis  
/s/ Mark J. Cavanagh  
/s/ Michael J. Talbot